

Unit 2

Federalism and Conditional Spending Programs

ABSTRACT

The Constitution created a federal government whereby power is shared between the federal and state governments as well as the citizens. The Constitution delegates specific power to the federal government and under the Tenth Amendment reserves the remaining power to the states and to the people. However, over time Congress has attempted to expand federal power by placing conditions on the state receipt of federal funds as an extension of Congress's spending power under Article 1, Section 8 of the Constitution. The Supreme Court has approved these *conditional spending programs* as a valid exercise of Congress's spending power but has placed requirements on them in order to ensure they do not go too far as to make them an unconstitutional exercise of power. Question still exist, however, as to whether or not these programs violate the very principles of federalism that form the foundation of our constitutional system of government.

ESSENTIAL QUESTION

Do federal conditional spending programs violate the principles of federalism embodied in the Constitution?

UNIT 2: LEARNING ACTIVITIES & ASSESSMENTS

Lesson 1: Thomas Jefferson and Alexander Hamilton

Driving Question: Did the Founders agree on the benefits of a strong central government?

Step 1: Opening Activity

Students will address the following questions using the think-pair-share strategy:

- What are the benefits of a strong central government?
- What are the dangers of a strong central government?
- Do you think it is important that we have a strong central government? Why or why not?

Summarize student thinking on the board during class sharing and ask students to try to identify patterns and extend their thinking.

Step 2: Jefferson and Hamilton's Political Views

In this activity students will read investigate the backgrounds and political views of Thomas Jefferson and Alexander Hamilton. Present each student with the profiles for [Thomas Jefferson](#) and [Alexander Hamilton](#) as well as the "[Jefferson & Hamilton Viewpoints](#)" handout. Students should use the profiles and viewpoints handout to answer the following questions about each individual.

- When and where did he live?
- What was his life like in his youth?
- What was his role in the American Revolution?
- What are his famous political writings?
- What different political offices (if any) did he occupy?
- What was his perspective on the role of a national government authority?
- Summarize his political legacy (i.e. what are his most important political ideas?)
- Is there any aspect of his youth, upbringing, or lifestyle that could have influenced the development of his political thinking? If so explain.

After students have completed their initial exploration of Jefferson and Hamilton review the questions as a class for each individual, focusing on their political ideals and the development of those ideals.

Step 2: Jefferson and Hamilton Quotes

Students will identify one quote for [Jefferson](#) and one for [Hamilton](#) that they believe best represents their respective viewpoints using the quote lists provided by *The Federalist Papers Project*. Students should visit the websites, select one quote, and complete a short analysis of the quote in which they explain how the quote best represents the views of Jefferson or Hamilton. As an alternative, assign students Jefferson or Hamilton and/or select 8-10 quotes for

them to choose from to reduce the length of this activity. Students should share their selections and rationale in small groups and/or as a full class in order to further explore and refine their understanding of Jefferson and Hamilton's political views.

Formative Assessment

Students should write a one paragraph reflection in which they argue in support of either Jefferson or Hamilton's views. Encourage students to reflect on whether the ideas of Hamilton or Jefferson could have been well suited to eighteenth century America but perhaps not as well suited for twenty-first century America.

Ask students to share their responses with the class and help them identify if necessary that Jefferson represents the anti-federalist viewpoint and was opposed to a strong central government while Hamilton represents the federalist viewpoint and was in support of a strong central government. Survey the class to see who supported/opposed strong central government at the beginning of the lesson versus who supported Jefferson/Hamilton at the end.

Use these questions to guide a discussion of the results:

- Did students who supported central government end up supporting Hamilton or vice versa? If not why not?
- What points made by Jefferson and Hamilton did you find particularly persuasive? Why?

Lesson 2: Federalism in the Constitution

Driving Question: Does the Constitution create a strong national government or a union of sovereign states?

Step 1: Finding Constitutional Examples

In this activity students will analyze [the text of the Constitution](#) in order to find examples of the power and authority held by the national government, state governments and the citizens. Break students into small groups of three or four for this activity. Each group should read through the Constitution and look for examples of national government, state government or citizen power and authority. Using a graphic organizer, students should list the examples they find and where the examples are located in the Constitution. Consider assigning each group to one or more specific articles of the Constitution to reduce the workload and/or assigning specific groups to look for examples for the national government while other groups look for examples for state governments (and then citizens).

Either as a class or in larger groups, students should compare their findings and address any disagreements over the examples they found. All students should end this step with a robust list of examples.

Additional Resources

- [Federalism: Crash Course Government & Politics #4](#) (9 min video)

- [“Federalism”](#) in Bowdoin College’s *Founding Principles* series (12 min video)

Step 2: Strong National Government or Union of Sovereign States?

In this activity students will analyze the examples they found to determine if the Constitution created a strong national government or a union of sovereign states. Create new groupings of students with no more than five students per group. Working within their groups students will answer the lesson’s driving question using evidence taken from the text of the Constitution to justify their response AND connecting the examples back to the political ideals of Jefferson and/or Hamilton. Each group can present their conclusion and reasoning to the class with a short presentation that could include a visual (poster, PowerPoint presentation, etc...). In addition students can be asked to submit a one paragraph response after all the presentations are complete that contains their position and a summary of their arguments.

As a capstone or to aid in student understanding, consider having students read [this article on federalism from the Bill of Rights Institute](#).

Lesson 3: Constitutionality of Conditional Spending Programs

Driving Question: Do federal conditional spending programs violate the principles of federalism embodied in the Constitution?

Step 1: Opening Activity

This activity is designed to help students explore their conceptions of fairness and morality as it relates to incentives being offered as encouragement for obedience. Begin by using one or more of the following scenarios to model with the class the way in which an institution can use incentives to extend their authority. For each scenario engage students in discussion of whether the scenario is fair or just. If different perspectives on the issue emerge encourage students to debate the issue and outline their rationale for why they believe the incentive program is or is not acceptable. Map the different rationales offered by students on the board.

- All students who wear either a tuxedo or evening gown to school everyday for the year will have their GPA boosted by one point.
- Any person who turns over a handgun to the police will receive a \$500 cash payment. No charges will be pursued against any person who turns in a gun obtained illegally.

Reflective Question: Should governments use incentives to try to get citizens to do things that the government does not have the power to order citizens to do?

Step 2: Introduction to Conditional Spending Programs

In this activity students will be introduced to conditional spending programs and will explore the Constitutional spending power. First explain the concept of a conditional spending program and give the example of [the national minimum drinking age](#). Ensure that students understand that conditional spending programs exist because governments try to use their power to spend to expand their authority to govern.

Next have students read Article 1, Section 8 of the Constitution as well as the Tenth Amendment. Students should answer the following questions while working in pairs:

- Based on Article 1, Section 8 of the Constitution as well as the Tenth Amendment, are conditional spending programs constitutional? Why or why not?
- Do you think it is fair and/or ethical for the federal government to use money as an incentive for state action (or inaction)?

Step 3: Case Studies

In this activity students will analyze two Supreme Court cases in order to understand the constitutional basis and requirements for conditional spending programs. Pair students off and distribute to each pairing [South Dakota v. Dole \(1987\)](#) and [NFIB v. Sebelius \(2012\)](#). Use [the case study strategy developed by Street Law, Inc.](#) or a shortened version thereof. Students should focus on the following basic questions:

- What requirements must be met for a conditional spending program to be constitutional?
- Did the program described in the case meet those requirements? Why or why not?
- Do you agree with the Court's interpretation and application of the Constitution? Why or why not?

TIPS

- If your students need background information on health insurance, these sources are helpful:
 - ["Health Insurance Explained"](#) from the Kaiser Family Foundation (5 min video)
 - ["Medicare and Medicaid at 50"](#) from the Kaiser Family Foundation (16 min video)
 - ["The YouToons get ready for Obamacare"](#) from the Kaiser Family Foundation (7 min video)
 - ["About the law"](#) (brief summary of the Affordable Care Act) from the Department of Health and Human Services
 - Lengthy ["Summary of the Affordable Care Act"](#) from the Kaiser Family Foundation
- Consider analyzing *Dole* together as a class to tease out the requirements before allowing students to independently analyze *Sebelius*.
- The relevant portions of the majority opinion in *Sebelius* begins at Part IV, A.
- The reasoning of the Supreme Court can be lengthy. Consider breaking the relevant parts into pieces and assigning them to pairs or groups of students.
- Justice Ginsburg offers a very eloquent and lengthy dissent to the majority opinion's holding in *Sebelius* that the Medicaid expansion program in the Affordable Care Act was in fact a new program and was unduly coercive. For a more in-depth learning experience, select germane pieces of the dissent ([starting in Section V of her concurrence](#)) and assign them to student groups to contrast with the reasoning in the majority opinion and further deepen their analysis.

Unit 2: Summative Assessment

All summative assessments should focus on the unit essential question: *Do federal conditional spending programs violate the principles of federalism embodied in the Constitution?*

There are many possible assessment formats to assess student learning on the question above. **Some options include:**

Summative Assessment Option 1

Students will analyze No Child Left Behind (NCLB) using the source material provided and determine if the NCLB is constitutional under the requirements for conditional spending programs created by the Supreme Court.

Analyze some or all of the NCLB source material provided below (or students can do independent research) and answer the following questions:

- Does NCLB violate the principles of federalism in the Constitution?
- Based on the majority opinions in *South Dakota v. Dole* and *NFIB v. Sebelius*, does NCLB meet the Supreme Court's standard for a constitutional conditional spending program?
- How would Thomas Jefferson view NCLB? Use quotes from the source material on Hamilton to help support your claim.
- How would Alexander Hamilton view NCLB? Use quotes from the source material on Hamilton to help support your claim.

SOURCES

- ["No Child Left Behind"](#) overview by Atlas
- ["No Child Left Behind: An Overview"](#) by EdWeek
- ["No Child Left Behind Act \(NCLB\) Executive Summary"](#) by the American Speech-Language-Hearing Association
- [The full law](#) from the US Department of Education

Summative Assessment Option 2

Students will compare and contrast the majority opinion with Justice Ginsburg's dissent in [NFIB v. Sebelius \(2012\)](#) and determine which opinion presents a more accurate interpretation and application of the Constitution. The format of the completed assessment could be in the form of an argumentative essay, a class debate, a video or other digital presentation such as an opinion piece on the nightly news, etc...

Unit 2: Additional Resources

[“Federalism”](#) from Cornell’s Legal Information Institute

[“Federalism”](#) at Constitution USA from PBS (5 short videos)

[“What Kind of Government Did the Constitution Create?”](#) from Annenberg Classroom in the book “Our Constitution”

[“State and Local Government”](#) at Documents of Freedom from the Bill of Rights Institute

[“Drama over Medicaid expansion continues in some states”](#) from PBS (6 min video)

[“Cliffs Notes Version of the Affordable Care Act”](#) by Forbes

[United States v. American Library Assn., Inc.](#) 539 U.S. 194 (2003)

[“Legal Limits on Conditional Spending including Recent Challenges to No Child Left Behind”](#) from the Harvard Law Review (good summary of the case law on conditional spending programs and how it applies to NCLB)